

OGC Has Reviewed

OGC 79-05089

31 May 1979

*File in Amdahl
Orig in
Disclosure
Agreements*

STATINTL

MEMORANDUM FOR: Acting Executive Officer
Office of Data Processing, DDA

FROM: [REDACTED]
Assistant General Counsel
Logistics & Procurement Law Div., OGC

SUBJECT: Agreement between Amdahl Corporation and
the Central Intelligence Agency

1. This Office has reviewed the attached non-disclosure agreement. We offer the following comments. This particular agreement is substantially different from Amdahl's non-disclosure agreement provided to the Agency as recently as April 1979. It is more comprehensive and restrictive than the earlier one.

2. In regards to paragraph 2, we suggest that the following provision be added so that the language would read:

User shall at all times hold and maintain said Proprietary Information in confidence and shall not disclose such Proprietary Information unless required to do so in compliance with Federal law.

This is due to the requirements of the Freedom of Information Act (FOIA). While we believe it would be only a remote possibility that a court would require the Agency to disclose Amdahl's information, FOIA does require the Federal agency involved to prove that the requested information is, in fact, proprietary. If the court disagreed, we could be required to make disclosure under that circumstance. Hence, the additional language is needed.

3. Our other comment pertains to the requirement of paragraph 9. The CIA does not agree to be bound by other than Federal law. The proposed agreement to be bound by the laws of California is not acceptable.

4. Should you have any question, please feel free to contact this Office at 8-8118.

STATINTL

AGREEMENT

between

AMDAHL CORPORATION

and

CENTRAL INTELLIGENCE AGENCY

This AGREEMENT dated as of the 23rd day of May, 1979, and effective as of that date, between Amdahl Corporation, a Delaware corporation, hereinafter referred to as "Amdahl", having a place of business at 1250 East Arques Avenue, Sunnyvale, California and Central Intelligence Agency hereinafter referred to as "User" having a place of business in Langley, Virginia.

WHEREAS, User desires access to and the right to use certain software program manuals, specifically VM Performance Enhancement Installation Manual and User's Guide (LS1004.01A), Software Logic Manual (LS1005.2) and Microfiche, and related technical information (hereinafter collectively referred to as "Proprietary Information") for the purpose of Internal Analysis and Pre-Installation Evaluation and

WHEREAS, such Proprietary Information is proprietary or confidential information of Amdahl and is not available without restrictions.

NOW, THEREFORE, the parties agree that:

1. Amdahl will furnish User with a copy of the Proprietary Information listed above.
2. User shall at all times hold and maintain said Proprietary Information in confidence and shall not disclose such Proprietary Information.

Such restriction shall not apply to information which:

- a. becomes publicly known through no wrongful act of User
- b. becomes rightfully known to User without confidential or proprietary restriction from a source other than Amdahl or
- c. is approved by Amdahl for disclosure without restriction in a written document which is signed by a duly authorized officer of Amdahl.
- d. User can show by written records that such information or data was rightfully in User's possession prior to disclosure by Amdahl.

3. User agrees that any and all Proprietary Information shall be utilized only for said analysis and evaluation and shall not be used for any other purpose.

4. User further agrees that said Proprietary Information and all copies shall be returned to Amdahl at the completion of the use by User as permitted hereby, but in no event later than September 23, 1979.

5. This AGREEMENT and the rights hereunder shall not be transferred or assigned by User.

6. User shall not reproduce or otherwise copy Amdahl Proprietary Information in whole or in part except in the performance of the uses permitted hereby. User shall furnish Amdahl with a copy of all documentation, modifications and other work product developed as a result of the use permitted hereunder, whether machine or human readable. All rights in and title to such materials shall vest in Amdahl subject only to User's use thereof in conjunction with the use of the

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7. This AGREEMENT sets forth the entire AGREEMENT and understanding between the parties as to the subject matter of this AGREEMENT and supersedes, cancels, and merges all agreements, negotiations, commitments, writings, and discussions between them as to the subject matter prior to the date of execution of this AGREEMENT.

8. User acknowledges that the Proprietary Information is provided on an as is basis. AMDAHL MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROPRIETARY INFORMATION. In no event will Amdahl be liable for any direct, indirect, special or consequential damages, in connection with or arising out of the information, performance or use of any item of Amdahl Proprietary Information provided for in this AGREEMENT.

9. This AGREEMENT shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, Amdahl Corporation has caused this AGREEMENT to be signed in its name and on its behalf by its representative thereunto duly authorized, and User has caused this instrument to be signed in its name and on its behalf by its representative thereunto duly authorized as of the day and year first above written.

AMDAHL CORPORATION

CENTRAL INTELLIGENCE AGENCY

By _____

By _____

Title _____

Title _____